

# *Fordham International Law Journal*

---

*Volume 18, Issue 5*

1994

*Article 7*

---

## The Decolonization of Gibraltar

Hon. J. J. Bossano\*

\*Gibraltar Socialist-Labour Party

Copyright ©1994 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

# THE DECOLONIZATION OF GIBRALTAR

*Hon. J.J. Bossano\**

The United Kingdom registered Gibraltar as a non-self governing territory under the provisions of Chapter XI of the U.N. Charter ("Charter") in 1946.<sup>1</sup> As a result, it is obliged under Article 73 of the Charter to provide the United Nations with annual reports on the colony.<sup>2</sup> The responsibility of the administering power is described, in Article 73, as a sacred trust that requires it "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions."<sup>3</sup>

In 1963, the General Assembly created a Special Committee of Twenty-Four Nations ("Committee of Twenty-Four") charged with monitoring the implementation in the colonial territories of the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>4</sup> Gibraltar was included from the very first moment in the list of countries and peoples subject to colonial rule and therefore subject to the resolution on decolonization. From the very first occasion that Gibraltar's status was discussed in the Committee of Twenty-Four, the Gibraltarians have claimed the right to choose what their future status should be.<sup>5</sup>

It has been argued that the people of Gibraltar are not able to claim the right of self-determination because of the Treaty of Utrecht of 1713.<sup>6</sup> Article X of the Treaty requires that the British Crown give the first refusal to the Spanish Crown in the event

---

\* Chief Minister of Gibraltar. Chief Minister Bossano is the leader of the Gibraltar Socialist-Labour Party.

1. G.A. Res. 66, U.N. Doc. A/64/Add. 1 (1947).

2. U.N. CHARTER art. 73(e).

3. *Id.* art. 73(b).

4. The U.N. General Assembly established on December 2, 1949 a special committee for non-self-governing territories. This committee, from 1955 onwards called the Committee on Information from Non-Self-Governing Territories, operated until 1963. In December 1963, the functions of this Committee were assumed by the Committee of 24, called the Committee on Decolonization.

5. For a legal analysis of Gibraltar's status, concluding that Gibraltar has the right to self-determination, see Simon J. Lincoln, *The Legal Status of Gibraltar: Whose Rock is it Anyway?*, 18 *FORDHAM INT'L L.J.* 285 (1994).

6. Treaty of Peace and Friendship Between Great Britain and Spain, July 13, 1713, Gr. Brit.-Spain, 28 *CONSOL. T.S.* 295, 1 *MAJOR PEACE TREATIES OF MODERN HISTORY 1648-1967* [M.P.T.] 177 (Fred L. Israel ed., 1967).

it should wish to give up sovereignty over the territory.<sup>7</sup> If one were, for the sake of argument, to consider that this Treaty requirement conflicts with the U.N. Charter and the relevant resolutions on decolonization, there can be no doubt as to which prevails. Resolution 2734 of December 16, 1970, declared that, in the event of a conflict between the obligations of a Member State under the Charter and under any other international treaty, their obligations under the Charter should prevail.<sup>8</sup>

The other argument that is used by the Spanish government to oppose the right of the Gibraltarians to determine their own future is that the issue is simply one of territorial integrity. It is argued that to allow Gibraltar to be decolonized in accordance with the wishes of the Gibraltarians — with the knowledge that there is no support for integration with Spain — would be to disrupt the territorial integrity and political unity of the Kingdom of Spain. In this Essay, I propose to address this argument and illustrate how it is flawed.

Spain has argued that the case of Gibraltar is not one of the wishes of its inhabitants but of the restitution of the territory to the Kingdom of Spain, from which it was separated in 1704, having been annexed to it in 1501. She considers that her views as to Gibraltar's future are supported by reference to paragraph 6 of U.N. Resolution 1514 of December 14, 1960, which states: "Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the U.N."<sup>9</sup>

---

7. *Id.* art. X, Consol. T.S. at 330, 1 M.P.T. at 223. Article X of the Treaty of Utrecht states, *inter alia*:

"The Catholic King does hereby, for himself, his heirs and successors, yield to the Crown of Great Britain the full and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and he gives up the said propriety to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever. . . . And in case it shall hereafter seem meet to the Crown of Great Britain to grant, sell, or by any means to alienate therefrom the propriety of the said town of Gibraltar, it is hereby agreed, and concluded, that the preference of having the same, shall always be given to the Crown of Spain before any others."

*Id.*

8. G.A. Res. 2734, U.N. GAOR, 25th Sess., Supp. No. 28, at 22, U.N. Doc. A/8028 (1970).

9. G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960).

The United Kingdom, for its part, flatly rejected the idea that operative paragraph 6 sanctioned the recovery of the territory by a neighboring state against the wishes of its population.

Within the Committee of Twenty-Four, a number of members have questioned the Spanish interpretation. As far back as 1967, the Representative of Australia, Mr. Rogers, expressed the reservation put by many members, when he said:

The representative of Spain and other representatives who generally are giving support to the Spanish case have claimed that the British retention of Gibraltar constitutes a partial or a total disruption of national unity and territorial integrity of Spain and therefore is incompatible with the Charter. My delegation submits, on the contrary, that paragraph 6 of resolution 1514 (XV) was not intended to apply to historic territorial claims between sovereign Member States. It is our view that the resolution was concerned not with the territorial integrity or national unity of sovereign States but with the possibility of a disruption of the national unity or territorial integrity in Non-Self-Governing Territories, which were yet to become independent. If one accepts the interpretation placed on operative paragraph 6 of resolution 1514 (XV) by the Spanish representative, it should follow, I think, that every historic claim by one sovereign State against another could fall within the purview of the discussions of this Committee. This would mean that nearly every European country, such being Europe's history, could lay claim to some part of another European country on the basis of some earlier conquest or some earlier transfer of land. The dangers of such a doctrine are so obvious that it should be unnecessary to develop the point further.<sup>10</sup>

Reading Resolution 1514 of 1960 there can be little doubt of its intention. Paragraph 5 requires that all power should be transferred to the people of the non-self governing territory. It is immediately followed by paragraph 6, which warns against the disruption of the unity and territorial integrity of a country, obviously meaning a country that is emerging from its colonial past. In fact, when the argument that the issue was one of restoring the territorial integrity with the neighboring state has been used

---

10. *Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, 546th mtg. at 66, U.N. Doc. A/AC.109/PV.546 (1967).

in other instances, these cases have been referred to the International Court of Justice precisely because they were cases of a territorial conflict between sovereign states and not questions of decolonization.

Spain, however, never attempted to do this in the case of Gibraltar. It has never questioned that the issue was one of decolonization. It has itself, on numerous occasions, referred to Gibraltar as an anachronism because it is a colony, and accepts fully that its people are a separate and distinct people of the United Kingdom.

Thus things stood some thirty years ago and thus they stand today. The argument of the Gibraltarians for the right to their land and their thirty-year struggle to have their rights as a colonial people recognized stands out in the annals of decolonization. Today, we have a world where the concept of territorial integrity has been shown to be subservient to the inalienable right to self-determination, not just in colonial situations but even in the case of distinct peoples creating their own national identity out of previous sovereign states. The example from the former Soviet Union and the Republics of Eastern Europe are there for all to see.

What is it that makes it so difficult for the issue of Gibraltar's decolonization to progress? It requires a recognition on the part of Spain that colonialism is about people and not about a few kilometers of land. After the war, on December 10, 1948, the U.N. Declaration of Human Rights described the kind of values by which our civilization should be governed. Article 21, paragraph 3, states: "[t]he will of the people shall be the basis of the authority of Government."<sup>11</sup> The essence of colonialism is the absence of such a relationship. The people of Gibraltar elect their own government, but certain constitutional powers rest with London in the hands of a government for which the Gibraltarians cannot vote. This is why the American colonies rebelled against the authority of London in 1776. This is what lies at the heart of the U.S. Constitution, which places power in the hands of the people.

When the United States and the U.N. Security Council feel entitled to interfere to bring peace to some disputed corner of the world, is it not because there is manifest evidence of the fail-

---

11. G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, at 75, U.N. Doc. A/810 (1948).

ure to respond to the wishes of a given ethnic group who are being denied the right to choose who should govern them? One of the most recent examples of the attempt to reconcile different view points has been the initiative developed in Northern Ireland. We are not talking about a colonial situation because the people of Northern Ireland are part of the United Kingdom. For those who support the Unionist cause, the possibility of secession from the United Kingdom represents an attempt to disrupt the national unity of the country.

What is clearly recognized by the U.K. government and by the government of the Irish Republic is that the issue is about people and not about real estate. As Dick Spring so aptly put it in his address to the Fordham University School of Law last year, "the principle of the consent of the governed, so central to the U.S. Constitution, is, I believe, the golden thread which may guide us out of the labyrinth."<sup>12</sup> Translated to the terminology of decolonization, for consent read self-determination.

Most Gibraltarians find it incomprehensible that the modern democratic Spain, in the NATO alliance and the European Union, should use the same arguments to pursue its territorial claim over Gibraltar as did the Spain that was ruled by General Franco in the 1960's. Although public opinion in Spain is changing slowly, the international community and, in particular, the United States, could undoubtedly do more to influence a change of heart on the part of Spain. There is little incentive to do so other than it would morally be the correct thing to do.

When the U.N. Secretary-General Boutros Boutros-Ghali addressed the Committee of Twenty-Four on its 30th Anniversary in 1993, he said:

It is up to the World Organization to see to the well being of the populations of the last remaining Non-Self Governing Territories. It is up to it to make sure that they fully exercise their right to choose their future freely, in accordance with the principles of the Charter and with the relevant resolutions of the United Nations. In this connection, the General Assembly has repeatedly reaffirmed that such factors as territorial size, size of population and geographical location should in no way be an impediment to the exercise of the

---

12. Dick Spring, *Gaining the Consent of the Governed: A Prerequisite to Peace in Northern Ireland*, 18 *FORDHAM INT'L L.J.* 6, 8 (1994).

inalienable right to self-determination.<sup>13</sup>

We endorse these sentiments whole-heartedly but ask ourselves:  
“Is anyone out there listening to the Secretary-General?”

---

13. *Secretary-General Tells Special Committee on Decolonization United Nations Must Promote Self-Determination of Non-Self-Governing Territories*, U.N. Dep't Pub. Info., Press Release SG/SM/4924, at 2, U.N. Doc. GA/COL/2864 (Feb. 11, 1993).